

Sep 08, 2020

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

BASIN DISPOSAL, INC., et al.

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

No. 4:15-CV-05078-SMJ

**CONSENT DECREE
BETWEEN IWAG III
PARTIES AND THE
UNITED STATES, AND
ORDER OF DISMISSAL**

**CONSENT DECREE BETWEEN IWAG III PARTIES AND
THE UNITED STATES, AND ORDER OF DISMISSAL**

This Consent Decree is made between Defendants 3M Company, Akzo Nobel Canada, Inc. (n/k/a PPG Architectural Coatings Canada Inc.), Blount, Inc., The Boeing Company, Crown Beverage Packaging, LLC, Daimler Trucks North America LLC, Goodrich Corporation, Georgia-Pacific LLC, Intalco Aluminum Corporation, PACCAR, Inc., PCC Structurals, Inc., Pharmacia LLC, Simpson Timber Company, Union Oil Company of California, and Weyerhaeuser NR Company (collectively "IWAG III Parties"), on the one hand, and the United States of America, Puget Sound Naval Shipyard ("PSNS"), United States Air Force ("USAF"), United States Army Corps of Engineers ("USACE"), United States Department of Agriculture ("USDA"), United States Department of the

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1 Interior (“DOI”), Bonneville Power Administration (“BPA”), United States Coast
2 Guard (“USCG”) and United States Department of Energy (“DOE”) (collectively
3 “United States”), on the other hand. The IWAG III Parties and the United States
4 are collectively referred to as the “Consent Decree Parties” and individually as a
5 “Consent Decree Party.”
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8 WHEREAS, Plaintiff Basin Disposal, Inc. (“BDI”) filed an original
9 Complaint in this case on August 5, 2015, Dkt. No. 1, which has been amended
10 twice and joined in by Plaintiffs BNSF Railway Company (“BNSF”) and Pasco
11 Sanitary Landfill, Inc. (“PSL”), Dkt. Nos. 6, 150;
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13 WHEREAS, the Second Amended Complaint, Dkt. No. 150, asserted
14 claims for cost recovery, contribution and declaratory judgment against various
15 named defendants, including the IWAG III Defendants, PSNS, USAF, USACE,
16 USDA, DOI, and others, under the Comprehensive Environmental Response,
17 Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-75
18 (“CERCLA”) and the Washington Model Toxics Control Act, as amended,
19 Chapter 70.105D RCW (“MTCA”), for response costs incurred and to be
20 incurred by Plaintiffs and other potentially liable parties at the Pasco Sanitary
21 Landfill NPL Site (“Site”);
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1 WHEREAS, the IWAG III Parties have asserted cross-claims and third-
2 party claims under CERCLA and/or MTCA against, among others, BPA, USCG
3 and DOE, alleging, *inter alia*, that the IWAG III Parties have incurred and will
4 incur Response Costs (as defined herein) with respect to the Site, and seeking,
5 *inter alia*, to recover Response Costs from the United States and other parties in
6 this case;
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8
9 WHEREAS, numerous other parties to this case have asserted claims under
10 CERCLA and/or MTCA in response to the claims asserted against them,
11 including claims against Plaintiffs, the IWAG III Parties, and the United States;
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13 WHEREAS, the MTCA claims asserted against the United States in this
14 case have been dismissed with prejudice, *see, e.g.*, ECF Nos. 396, 397, 399;
15

16 WHEREAS, the IWAG III Parties and the United States agree that
17 settlement of this case is in the public interest, that settlement of this matter will
18 avoid the costs and uncertainties of further litigation, and that entry of this
19 Consent Decree is the most appropriate means of resolving the claims against the
20 United States in this case;
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22 WHEREAS, this Consent Decree is intended to include a complete and
23 final settlement of Plaintiffs' claims against the United States set forth in the
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1 Second Amended Complaint, the IWAG III Parties' claims set forth in their
2 cross-claims and third-party claims against the United States, and all other claims
3 against the United States in this case regarding the Site; and
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5 WHEREAS, the Court finds that this Consent Decree is reasonable, fair,
6 lawful, and adequately protects the public interest;
7

8 THEREFORE, without further adjudication of any issue of fact or law, and
9 upon consent of the Consent Decree Parties by their authorized representatives,
10 the Court finds that there is good and sufficient cause to enter this Consent
11 Decree, and it is hereby ORDERED, ADJUDGED, AND DECREED as follows:
12

13 I. JURISDICTION AND VENUE
14

15 1. This Court has jurisdiction over the subject matter of this action
16 pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and
17 9613(b), and pursuant to 28 U.S.C. § 1331 and 1345.
18

19 2. Venue is proper in this district pursuant to Section 113(b) of
20 CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391.
21

22 II. PARTIES BOUND
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24 3. This Consent Decree is binding upon the United States and upon the
25 IWAG III Parties and the IWAG III Parties' respective successors and assigns.
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1 Any change in ownership or corporate or other legal status, including, but not
2 limited to, any bankruptcy, transfer of stock, assets, ownership interests, or real
3 or personal property, shall not alter the Consent Decree Parties' respective
4 responsibilities and obligations under this Consent Decree.
5

6 III. DEFINITIONS

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8 4. Unless otherwise expressly provided herein, terms used in this
9 Consent Decree that are defined in CERCLA or in regulations promulgated under
10 CERCLA shall have the meaning assigned to them in CERCLA or in such
11 regulations. Whenever terms listed below are used in this Consent Decree, the
12 following definitions shall apply:
13

14 a. "3M Company" shall mean Defendant 3M Company and
15 persons acting on 3M Company's behalf, including without limitation its owners,
16 shareholders, officers, directors, employees, successors, predecessors, affiliates,
17 agents, attorneys, assigns, parent companies, subsidiaries, and all related entities,
18 whether pursuant to contract, by operation of law, or otherwise. For purposes of
19 this Consent Decree, the term "3M Company" specifically includes the
20 "Minnesota Mining and Manufacturing Company" identified in historical
21 documents related to the Site.
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1 b. “Blount” shall mean Defendant Blount, Inc. and persons
2 acting on Blount’s behalf, including without limitation its owners, shareholders,
3 officers, directors, employees, successors, predecessors, affiliates, agents,
4 attorneys and assigns, whether pursuant to contract, by operation of law, or
5 otherwise. The term “Blount” specifically includes the “Oregon Saw and Chain
6 Division” and “Omark Industries” identified in historical documents related to
7 the Site.
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10 c. “Boeing” shall mean Defendant The Boeing Company and
11 persons acting on Boeing’s behalf, including without limitation its owners,
12 shareholders, officers, directors, employees, successors, predecessors, affiliates,
13 agents, attorneys and assigns, whether pursuant to contract, by operation of law,
14 or otherwise.
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16
17 d. “BPA” shall mean Third-Party Defendant Bonneville Power
18 Administration, its successor departments, agencies or instrumentalities, and
19 persons acting on BPA’s behalf.
20

21 e. “CERCLA” shall mean the Comprehensive Environmental
22 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
23 §§ 9601-9675.
24

1 f. "Consent Decree" shall mean this Consent Decree.

2 g. "Consent Decree Parties" shall mean the the United States and
3 the IWAG III Parties to this Consent Decree. Individually, any of the Consent
4 Decree Parties may be referred to in this Consent Decree as a "Consent Decree
5 Party."
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7 h. "Contamination" shall mean any pollutant, contaminant,
8 hazardous substance, solid waste, or hazardous waste, as those terms are defined
9 under CERCLA or the Resource Conservation and Recovery Act, 42 U.S.C. §§
10 6901-6992k.
11

12 i. "Covered Matters" shall mean any and all claims asserted or
13 that could have been asserted and relief sought by the IWAG III Parties against
14 the United States in this case and any other past and future claims that the IWAG
15 III Parties could now or hereafter assert against the United States relating to any
16 Contamination at or emanating from the Site, with the exception of: (i) any
17 claims or causes of action for natural resource damages regarding the Site; (ii)
18 liability based upon (a) ownership or operation of the Site after the Effective Date
19 of this Consent Decree or (b) the transportation, treatment, storage, or disposal,
20 or the arrangement for the transportation, treatment, storage, or disposal, of a
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1 Hazardous Substance at the Site after the Effective Date of this Consent Decree;
2 and (iii) claims seeking the United States' alleged proportionate share of liability
3 for toxic torts, trespass, nuisance, personal injury or property damage, brought in
4 response to claims for toxic torts, trespass, nuisance, personal injury or property
5 damage asserted after the Effective Date of this Consent Decree by persons or
6 entities that (a) are not parties to this Consent Decree (b) are not and have not
7 been parties to this lawsuit and (c) have not been named as a potentially liable
8 party at the Site. Covered Matters does not include any past or future claims that
9 the IWAG III Parties could now or hereafter assert against each other.
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13 j. "Crown Beverage" shall mean Defendant Crown Beverage
14 Packaging, LLC and persons acting on Crown Beverage's behalf, including
15 without limitation its owners, shareholders, officers, directors, employees,
16 successors, predecessors, affiliates, agents, attorneys and assigns, whether
17 pursuant to contract, by operation of law, or otherwise. The term "Crown
18 Beverage" specifically includes the "Continental Can Company" identified in
19 historical documents related to the Site.
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23 k. "Daimler Trucks" shall mean Defendant Daimler Trucks
24 North America LLC and persons acting on Daimler Trucks' behalf, including
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1 without limitation its owners, shareholders, officers, directors, employees,
2 successors, predecessors, affiliates, agents, attorneys and assigns, whether
3 pursuant to contract, by operation of law, or otherwise. The term “Daimler
4 Trucks” specifically includes the “Freightliner Corporation” identified in
5 historical documents related to the Site.
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8 l. “Day” shall mean calendar day. In computing any period of
9 time under this Consent Decree, where the last day would fall on a Saturday,
10 Sunday, or Federal holiday, the period shall run until the close of business of the
11 next day that is not a Saturday, Sunday, or Federal holiday.
12

13 m. “DOE” shall mean Third-Party Defendant United States
14 Department of Energy, its successor departments, agencies or instrumentalities,
15 and persons acting on DOE’s behalf.
16

17 n. “DOI” shall mean Defendant United States Department of the
18 Interior, its successor departments, agencies or instrumentalities, and persons
19 acting on DOI’s behalf.
20

21 o. “Double Recovery” shall mean: (i) any Third-party
22 Reimbursement of any of the money being paid by the United States pursuant to
23 this Consent Decree; and (ii) any compensation of any kind for Response Costs
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1 provided by the United States to any of the IWAG III parties, other than the
2 money being paid pursuant to this Consent Decree, with such compensation to
3 include, but not be limited to, direct payments, federal contract payments or
4 credits, and the compromise of any claims, causes of action, suits, or demands of
5 any kind whatsoever in law or in equity for Response Costs, whether asserted
6 against the United States or other persons or entities.
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9 p. "Effective Date" shall mean the date upon which this
10 Consent Decree is entered by the Court.
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12 q. "EPA" shall mean the United States Environmental Protection
13 Agency and its successor departments, agencies, or instrumentalities.
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15 r. "Goodrich" shall mean Defendant Goodrich Corporation on
16 behalf of Kalama Specialty Chemicals, Inc. and persons acting on Goodrich's
17 behalf, including without limitation its owners, shareholders, officers, directors,
18 employees, successors, predecessors, affiliates, agents, attorneys and assigns,
19 whether pursuant to contract, by operation of law, or otherwise. The term
20 "Goodrich" specifically includes "Kalama Specialty Chemicals, Inc." and the
21 "Kalama Chemical Inc." identified in historical documents related to the Site.
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1 s. "GP" shall mean Defendant Georgia-Pacific LLC and persons
2 acting on GP's behalf, including without limitation its owners, shareholders,
3 officers, directors, employees, successors, predecessors, affiliates, agents,
4 attorneys and assigns, whether pursuant to contract, by operation of law, or
5 otherwise. The term "GP" specifically includes the "Crown Zellerbach" and
6 "James River Corporation" identified in historical documents related to the Site,
7 but not "Pacific Resin & Chemical, Inc." GP denies that it is the successor to
8 Pacific Resin & Chemical, Inc.
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12 t. "Hazardous Substance" shall have the same meaning as
13 defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14).
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15 u. "Intalco" shall mean Defendant Intalco Aluminum
16 Corporation and persons acting on Intalco's behalf, including without limitation
17 its owners, shareholders, officers, directors, employees, successors, predecessors,
18 affiliates, agents, attorneys and assigns, whether pursuant to contract, by
19 operation of law, or otherwise.
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21 v. "Interest" shall mean interest at the rate specified for interest
22 on investments of the EPA Hazardous Substance Superfund, compounded
23 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The
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1 applicable rate of interest shall be the rate in effect at the time the interest
2 accrues. The rate of interest is subject to change on October 1 of each year. Rates
3 are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.
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5 w. "IWAG III Parties" shall mean collectively 3M Company,
6 Blount, Boeing, Crown Beverage, Daimler Trucks, Goodrich, GP, Intalco,
7 PACCAR, PCC Structural, Pharmacia, PPG Architectural Coatings Canada,
8 Simpson Timber, Unocal and Weyerhaeuser. Individually, any of the IWAG III
9 Parties may be referred to in this Consent Decree as an "IWAG III Party."
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11 x. "MTCA" shall mean the Washington Model Toxics Control
12 Act, as amended, Chapter 70.105D RCW.
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14 y. "PACCAR" shall mean Defendant PACCAR, Inc. and
15 persons acting on PACCAR's behalf, including without limitation its owners,
16 shareholders, officers, directors, employees, successors, predecessors, affiliates,
17 agents, attorneys and assigns, whether pursuant to contract, by operation of law,
18 or otherwise. The term "PACCAR" specifically includes the "Pacific Car &
19 Foundry" identified in historical documents related to the Site.
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21 z. "Paragraph" or "Sub-Paragraph" shall mean an enumerated
22 paragraph or sub-paragraph of this Consent Decree.
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1 aa. "Pasco Landfill Trust Account" shall mean the IOLTA trust
2 account maintained by The Justis Law Firm LLC, lead counsel for the IWAG III
3 Parties in this case.
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5 bb. "PCC Structurals" shall mean Defendant PCC Structurals,
6 Inc. and persons acting on PCC Structurals' behalf, including without limitation
7 its owners, shareholders, officers, directors, employees, successors, predecessors,
8 affiliates, agents, attorneys and assigns, whether pursuant to contract, by
9 operation of law, or otherwise. The term "PCC Structurals" specifically includes
10 the "Precision Castparts Corp." identified in historical documents related to the
11 Site.
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14 cc. "Pharmacia" shall mean Defendant Pharmacia LLC and
15 persons acting on Pharmacia's behalf, including without limitation its owners,
16 shareholders, officers, directors, employees, successors, predecessors, affiliates,
17 agents, attorneys and assigns, whether pursuant to contract, by operation of law,
18 or otherwise. The term "Pharmacia" specifically includes "Monsanto" and
19 "Wood Treatment Chemical Co." identified in historical documents related to the
20 Site.
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1 dd. "PPG Architectural Coatings Canada" shall mean Defendant
2 Akzo Nobel Canada, Inc. (n/k/a PPG Architectural Coatings Canada Inc.) and
3 persons acting on PPG Architectural's behalf, including without limitation its
4 owners, shareholders, officers, directors, employees, successors, predecessors,
5 affiliates, agents, attorneys and assigns, whether pursuant to contract, by
6 operation of law, or otherwise. The term "PPG Architectural Coatings Canada"
7 specifically includes the "Canadian Industries Limited" identified in historical
8 documents related to the Site, but does not include Defendants PPG Architectural
9 Finishes, Inc. or PPG Industries, Inc.
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13 ee. "Response Costs" shall mean all costs of "response" as that
14 term is defined in CERCLA Section 101(25), 42 U.S.C. § 9601(25), for response
15 actions conducted at or in connection with the Site, as "Site" is defined herein.¹
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19 ¹ In the event that there is a change in law that makes MTCA or a similar,
20 subsequently enacted Washington cleanup statute applicable to the United States
21 at the Site, then this definition of "Response Costs" shall be deemed to include
22 costs of "remedy" or "remedial action" as those terms are defined in RCW
23 70.105D.020(33) or costs of a related nature in the subsequently enacted statute.
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1 ff. "Simpson Timber" shall mean Defendant Simpson Timber
2 Company and persons acting on Simpson Timber's behalf, including without
3 limitation its owners, shareholders, officers, directors, employees, successors,
4 predecessors, affiliates, agents, attorneys and assigns, whether pursuant to
5 contract, by operation of law, or otherwise.
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8 gg. "Site" shall mean the facility known as the Pasco Sanitary
9 Landfill NPL Site, located in Pasco, Franklin County, Washington, including any
10 area where a Hazardous Substance that has been deposited, stored, disposed of,
11 or placed at the facility has come, or will come, to be located. The IWAG III
12 Parties reserve their arguments regarding divisibility based on the assertion that
13 the "Site" is comprised of distinct areas, including the Industrial Waste Areas
14 (known as Zones A, C/D, and E) and the Municipal Solid Waste Areas (known as
15 the Balefill area, the Inert Waste Disposal area, the Burn Trenches, the septic
16 lagoons, the Landspread area, the Sludge Management area, and the Municipal
17 Solid Waste Landfill). Nonetheless, this Consent Decree addresses the United
18 States' liability at the entire "Site."
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22 hh. "Third-party Reimbursement" shall mean any payment of, or
23 consideration for, Response Costs that any of the IWAG III Parties receives from
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1 any person or entity other than the United States, including but not limited to,
2 direct payments, insurance or contract recoveries, the discharge of any debt or
3 obligation, or the satisfaction of any claims, causes of action, suits, or demands of
4 any kind whatsoever in law or in equity.
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6 ii. "Unocal" shall mean Defendant Union Oil Company of
7 California and persons acting on Unocal's behalf, including without limitation its
8 owners, shareholders, officers, directors, employees, successors, predecessors,
9 affiliates, agents, attorneys and assigns, whether pursuant to contract, by
10 operation of law, or otherwise. The term "Unocal" specifically includes the
11 "Collier Carbon and Chemical Corp." identified in historical documents related
12 to the Site.
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16 jj. "United States" shall mean the United States of America, and
17 all agencies, departments, and instrumentalities of the United States, including
18 but not limited to, BPA, DOE, DOI, USACE, USAF, USCG, USDA, and USN.
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20 kk. "USACE" shall mean Defendant United States Army Corps
21 of Engineers, its successor departments, agencies or instrumentalities, and
22 persons acting on USACE's behalf.
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1 ll. “USAF” shall mean Defendant United States Air Force, its
2 successor departments, agencies or instrumentalities, and persons acting on
3 USAF’s behalf.
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5 mm. “USCG” shall mean Third-Party Defendant United States
6 Coast Guard, its successor departments, agencies or instrumentalities, and
7 persons acting on USCG’s behalf.
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9 nn. “USDA” shall mean Defendant the United States Department
10 of Agriculture, its successor departments, agencies or instrumentalities, and
11 persons acting on USDA’s behalf.
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13 oo. “USN” shall mean the United States Navy, including
14 Defendant PSNS, the USN’s successor departments, agencies or
15 instrumentalities, and persons acting on USN’s behalf.
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17 pp. “Weyerhaeuser” shall mean Defendant Weyerhaeuser NR
18 Company and persons acting on Weyerhaeuser’s behalf, including without
19 limitation its owners, shareholders, officers, directors, employees, successors,
20 predecessors, affiliates, agents, attorneys and assigns, whether pursuant to
21 contract, by operation of law, or otherwise.
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24 IV. GOOD FAITH NEGOTIATIONS; NON-ADMISSIONS
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1 5. This Consent Decree was negotiated and executed by the Consent
2 Decree Parties in good faith and at arm's length and is a fair and equitable
3 compromise of claims that were vigorously contested.
4

5 6. With the exception of Paragraphs 1 and 2, this Consent Decree is not
6 to be interpreted as an admission on the part of any Consent Decree Party of any
7 issue of fact or law, or liability or wrongdoing, and it is expressly understood that
8 no Consent Decree Party, by agreeing to this Consent Decree, admits liability of
9 any sort or any other issue of fact or law.
10

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12 V. PAYMENT OF RESPONSE COSTS

13 7. Within a reasonable time after the Effective Date of this Consent
14 Decree, the United States shall pay Seven Million Five Hundred Thousand
15 Dollars (\$7,500,000.00) to the "Pasco Landfill Trust Account," which resolves
16 the United States' alleged potential liability for Covered Matters.
17

18 8. Payment to the "Pasco Landfill Trust Account" under Paragraph 7
19 above shall be made by Electronic Funds Transfer in accordance with
20 instructions provided below, unless notice of revised payment instructions is
21 provided by the IWAG III Parties in accordance with Paragraph 19.
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Bank Name:	Commerce Bank
Bank Address:	11080 Oakmont St.
Bank City, State:	Overland Park, KS 66210
ABA/Routing Number:	101000019
Account Number:	591028706

9. In the event the payment by the United States under Paragraph 7 above is not made within 120 days after the Effective Date of this Consent Decree, or within 120 days after the date upon which the IWAG III Parties provide the United States with any revised payment instructions, whichever is later, then Interest on the unpaid balance shall begin accruing as of the 121st day after such later date. In the event the United States cannot make the payment due to an error in the payment instructions or account information provided by the IWAG III Parties, any time limits for payments by the United States shall be tolled until after the correct account information is transmitted to the United States.

10. Said payment by the United States is subject to the availability of funds appropriated for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42 and 1511-19.

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VI. RELEASES; COVENANTS NOT TO SUE;
DOUBLE RECOVERY; RESERVATIONS; INDEMNIFICATION

11. Upon the Effective Date of this Consent Decree, for and in consideration of the commitments by the United States in this Consent Decree, the IWAG III Parties hereby forever release, discharge, and covenant and agree not to assert (by way of commencement of an action or proceeding or otherwise, by the joinder of the United States in an existing action, counterclaim, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which they, or their respective subsidiaries, parents, affiliates, assigns, consultants, insurers, or any other related entities, had, may have had, and currently or may hereafter have, including, but not limited to, claims under CERCLA, against the United States for Covered Matters.

12. Each of the IWAG III Parties hereby warrants that it has not sought or received, and shall not in the future seek to receive, any Double Recovery, whether through Third-party Reimbursement, any federal contract, or any claim, cause of action, suit, or demand of any kind whatsoever in law or in equity. Based on each of the IWAG III Parties' knowledge and belief, and subject to the penalties of the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and other applicable law, each of the IWAG III Parties hereby warrants to the United States that, other

1 than the money paid by the United States pursuant to this Consent Decree, it has
2 neither sought nor received from the United States compensation for Response
3 Costs, nor will it seek or receive in the future further compensation for Response
4 Costs or reimbursement from the United States of any costs paid or to be paid by
5 the United States pursuant to this Consent Decree. In the event that any IWAG III
6 Party receives a Double Recovery, within ninety days thereafter such IWAG III
7 Party shall repay the United States dollar-for-dollar in the amount of the Double
8 Recovery. Such amount shall accrue interest as described in 26 U.S.C. § 6621
9 and § 6622 from the date on which it was received. If a Double Recovery is
10 received from the United States pursuant to a federal contract, the receiving
11 IWAG III Party shall notify the responsible official for that federal contract in
12 writing within 30 days, and reimburse the United States: (1) pursuant to an
13 express reimbursement provision in that federal contract, if any; or (2) if the
14 federal contract contains no express reimbursement provision, by transmitting a
15 sum equal to the amount of the Double Recovery in accordance with written
16 instructions provided by the responsible official for that federal contract.
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23 13. The United States expressly reserves its right to assert against the
24 IWAG III Parties (and any other person and/or party) any claims or actions
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1 regarding the Site brought on behalf of the United States Environmental
2 Protection Agency, any lead agency under the National Contingency Plan, or a
3 natural resource trustee. Nothing in this Consent Decree shall constitute or be
4 construed as a waiver, limitation, or release of any claims or causes of action by
5 the United States to enforce any federal laws or regulations in connection with
6 the Site, or as a limitation of the rights of the IWAG III Parties to contest or
7 assert defenses to such claims or causes of action.
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10 14. The IWAG III Parties shall indemnify and hold harmless the United
11 States and its officers, contractors, or employees against any and all past and
12 future claims, demands, orders, causes of action, and/or judgments against the
13 United States by any person, company, organization, or entity arising from or
14 related to Covered Matters. Consistent with the definition of "Covered Matters"
15 in Sub-paragraph 4.i, the IWAG III Parties' obligations pursuant to this
16 Paragraph do not extend to claims against the United States for toxic torts,
17 trespass, nuisance, personal injury or property damage asserted after the Effective
18 Date of this Consent Decree by persons or entities that (a) are not parties to this
19 Consent Decree (b) are not and have not been parties to this lawsuit and (c) have
20 not been named as a potentially liable party at the Site. The IWAG III Parties'
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1 total obligations pursuant to this Paragraph shall not exceed the amount of
2 payment made by the United States pursuant to Paragraph 7. The IWAG III
3 Parties shall have no duty to defend the United States.
4

5 VII. EFFECT OF SETTLEMENT;
6 CONTRIBUTION PROTECTION; DISMISSALS

7 15. Nothing in this Consent Decree shall be construed to create any
8 rights in, or grant any cause of action to, any person not a Consent Decree Party.
9 The preceding sentence shall not be construed to waive or nullify any rights that
10 any person not a signatory to this Consent Decree may have under applicable
11 law. Each of the Consent Decree Parties expressly reserves any and all rights
12 (including, but not limited to, any right of contribution), defenses, claims,
13 demands, and causes of action that each Consent Decree Party may have against
14 any person not a Consent Decree Party with respect to any matter, transaction, or
15 occurrence relating in any way to the Site, other than the dismissal of the
16 counterclaim by the United States in Paragraph 17 below.
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20 16. The Consent Decree Parties agree, and by entering this Consent
21 Decree this Court finds, that this settlement constitutes a judicially-approved
22 settlement for purposes of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and
23 that the United States is entitled, as of the Effective Date, to protection from
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1 contribution actions or claims as provided by Section 113(f) of CERCLA, 42
2 U.S.C. § 9613(f), or as may be otherwise provided by law, whether statute or
3 common law, for any and all claims that were, could have been, could now be, or
4 hereafter could be asserted against the United States by any person, seeking
5 recovery or contribution regarding Response Costs relating to any Contamination
6 at or emanating from the Site, with the exception of liability for Response Costs
7 based upon (a) ownership or operation of the Site after the Effective Date of this
8 Consent Decree or (b) the transportation, treatment, storage, or disposal, or the
9 arrangement for the transportation, treatment, storage, or disposal, of a
10 Hazardous Substance at the Site after the Effective Date of this Consent Decree.
11 As of the Effective Date of this Consent Decree, any and all claims that were,
12 could have been, could now be, or hereafter could be asserted against the United
13 States by any person, seeking recovery or contribution regarding Response Costs
14 relating to any Contamination at or emanating from the Site are extinguished,
15 discharged, satisfied, and/or otherwise unenforceable, with the exception of
16 liability for Response Costs based upon (a) ownership or operation of the Site
17 after the Effective Date of this Consent Decree or (b) the transportation,
18 treatment, storage, or disposal, or the arrangement for the transportation,
19
20
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1 treatment, storage, or disposal, of a Hazardous Substance at the Site after the
2 Effective Date of this Consent Decree.

3
4 17. As of the Effective Date of this Consent Decree, all claims asserted
5 and relief sought in this case against the United States by any party to this case
6 other than the IWAG III Parties are dismissed with prejudice. As of the Effective
7 Date of this Consent Decree, the counterclaim asserted by the United States in
8 Federal Defendants' Answer to Second Amended Complaint and Counterclaim
9 (Dkt. No. 175) also is dismissed with prejudice.
10

11 12 VIII. OTHER CLAIMS

13 18. Other than the dismissal of the counterclaim by the United States in
14 Paragraph 17 above, this Consent Decree does not extend to or inure to the
15 benefit of any party, person, or entity, other than the IWAG III Parties and the
16 United States. Nothing in this Consent Decree shall be construed to make any
17 other party, person, or entity a third-party beneficiary of this Consent Decree.
18
19 Furthermore, nothing in this Consent Decree is intended to be, nor shall be
20 construed as, a waiver, release, or covenant not to sue for any claim or cause of
21 action, administrative or judicial, in law or in equity, which the IWAG III Parties
22 and the United States may have against any person, firm, partnership, trust,
23
24
25

1 corporation or any other entity that is not a party to this Consent Decree, other
2 than the dismissal of the counterclaim by the United States in Paragraph 17
3 above.
4

5 IX. NOTICES AND SUBMISSIONS

6 19. Whenever, under the terms of this Consent Decree, notice is
7 required to be given or a document is required to be sent by one Consent Decree
8 Party to another, it shall be directed to the individuals at the addresses specified
9 below, unless those individuals or their successors give notice of a change to the
10 other Consent Decree Party in writing. Written notice as specified in this Section
11 shall constitute complete satisfaction of any written notice requirement of the
12 Consent Decree with respect to the IWAG III Parties and the United States,
13 respectively.
14
15
16

17 As to the IWAG III Parties: Gary D. Justis
18 The Justis Law Firm LLC
19 10955 Lowell Ave.
20 Suite 520
21 Overland Park, KS 66210-2336
22
23
24
25

With copies to:

William W. Pearson
Pearson Law Group LLC
3509 E. Shea Blvd.
Suite 117
Scottsdale, AZ 85028

and

Katherine E. Page
Perkins Coie LLP
1201 Third Ave.
Suite 4900
Seattle, WA 98101-3099

and

Jennifer L. Sanscraigne
Ogden Murphy Wallace P.L.L.C.
901 Fifth Ave.
Suite 3500
Seattle, WA 98164

As to the United States:

Chief, Environmental Defense Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-6-20598

With copy to:

Mark A. Nitczynski
Michele L. Walter
U.S. Department of Justice
Environmental Defense Section
999 18th St.
South Terrace, Suite 370
Denver, CO 80202
Re: DJ # 90-11-6-20598

Office of the General Counsel
Naval Litigation Office
720 Kennon Avenue SE
Building W-36, Room 233
Washington Navy Yard
Washington, D.C. 20374-5013

Any Consent Decree Party that changes its designated notice recipient(s) shall notify in writing the designated notice recipient(s) for the other Consent Decree Parties.

X. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

1 XI. MODIFICATION

2 21. Any modification to this Consent Decree shall be in writing, signed
3 by the IWAG III Parties and the United States, and shall be effective upon
4 approval by the Court.
5

6 XII. COSTS OF SUIT

7
8 22. Each Consent Decree Party shall bear its own costs and attorney's
9 fees in this action.
10

11 XIII. SIGNATORIES/SERVICE

12 23. Each of the undersigned certifies that he or she is fully authorized to
13 enter into the terms and conditions of this Consent Decree and to execute and
14 legally bind the Consent Decree Party that he or she represents to this document.
15

16 24. This Consent Decree may be signed in counterparts, and its validity
17 shall not be challenged on that basis.
18

19 XIV. GENERAL PROVISIONS

20 25. Complete Agreement. This Consent Decree contains the complete
21 agreement between the Consent Decree Parties regarding the subject matter
22 addressed herein and fully supersedes all prior contracts, agreements,
23 understandings, negotiations or discussions, oral or written, relating to the subject
24
25

1 matter hereof. There are no warranties, representations, agreements or
2 understandings, oral or written, relating to the subject matter hereof that are not
3 fully expressed or provided for herein.
4

5 26. Headings. Any paragraph or subparagraph headings or section titles
6 in this Consent Decree are provided solely as a matter of convenience to the
7 reader and shall not be construed to alter the meaning of any paragraph or
8 provisions of this Consent Decree.
9

10 27. Governing Law. This Consent Decree shall be governed and
11 interpreted in accordance with federal law.
12

13 28. No Use As Evidence: This Consent Decree shall not be admitted
14 into evidence or admissible as evidence in any action or proceeding other than
15 the above-captioned action in which this Consent Decree is entered, except for
16 the following:
17

18 a. An action, cross-claim, or counterclaim brought by the IWAG
19 III Parties or the United States to enforce this Consent Decree; and
20

21 b. Any proceeding where the United States seeks to establish
22 that it is entitled to protection from claims under this Consent Decree, or to
23 enforce the IWAG III Parties' indemnification of the United States, or any action
24
25

1 or proceeding related to the obligations of the Consent Decree Parties under
2 this Consent Decree.

3
4 XV. FINAL JUDGMENT

5 29. This Consent Decree constitutes the final, complete, and exclusive
6 agreement and understanding among the Consent Decree Parties regarding the
7 settlement embodied in the Consent Decree. The Consent Decree Parties
8 acknowledge that there are no representations, agreements, or understandings
9 relating to the settlement other than those expressly contained in this Consent
10 Decree. Upon entry of this Consent Decree by the Court, this Consent Decree
11 shall constitute a final judgment between and among the Consent Decree Parties.
12
13

14
15 United States of America:

16
17 By: 

18 Mark A. Nitzczynski
19 Michele L. Walter
20 United States Department of Justice
21 Environmental Defense Section
22
23
24
25

Dated: 5/15/2020

1 IWAG III Parties:

2 3M Company
3

4
5 By: J. R. Kotsmith

Dated: April 27, 2020

6 James R. Kotsmith, P.E.
7 Manager, Corporate Environmental
8 3M Environment, Health, Safety
9 and Products Stewardship

10 Akzo Nobel Canada, Inc. (n/k/a PPG Architectural Coatings Canada Inc.)
11

12 By: _____

Dated: _____

13 Steven F. Faeth
14 Corporate Counsel

15 Blount, Inc.
16

17
18 By: _____

Dated: _____

19 Chad E. Paulson
20 Senior Vice President, General Counsel
21 and Secretary
22
23
24
25

26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 32

April 22, 2020


1 IWAG III Parties:

2 3M Company

3
4
5 By: _____
6 James R. Kotsmith, P.E.
7 Manager, Corporate Environmental
8 3M Environment, Health, Safety
9 and Products Stewardship

Dated: _____

10 Akzo Nobel Canada, Inc. (n/k/a PPG Architectural Coatings Canada Inc.)

11
12
13  ss
14 By: _____
15 Steven F. Faeth
16 Corporate Counsel

17 April 24, 2020
18 Dated: _____

19 Blount, Inc.

20 By: _____
21 Chad E. Paulson
22 Senior Vice President, General Counsel
23 and Secretary

24 Dated: _____

25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 31

April 22, 2020

1 IWAG III Parties:

2 3M Company

3
4
5 By: _____
6 James R. Kotsmith, P.E.
7 Manager, Corporate Environmental
8 3M Environment, Health, Safety
9 and Products Stewardship


Dated: _____

10 Akzo Nobel Canada, Inc. (n/k/a PPG Architectural Coatings Canada Inc.)

11
12 By: _____
13 Steven F. Faeth
14 Corporate Counsel

Dated: _____

15 Blount, Inc.

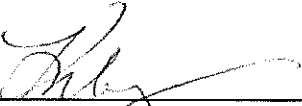
16
17 
18 By: _____
19 Chad E. Paulson
20 Senior Vice President, General Counsel
21 and Secretary

Dated: May 4, 2020

22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 32

April 22, 2020

1 The Boeing Company

2
3
4 By:  _____
5 Katie Page on behalf of
6 Stanley N. Alpert
7 Senior Environmental Counsel

Dated: _____

8 Crown Beverage Packaging, LLC

9
10 By: _____
11 Michael J. Rowley
12 Asst. General Counsel and Asst. Secretary

Dated: _____

13
14 Daimler Trucks North America LLC

15
16 By: _____
17 Jennifer E. Marsh
18 Associate General Counsel

Dated: _____

1 The Boeing Company

2
3
4 By: _____

Dated: _____

5 Stanley N. Alpert
6 Senior Environmental Counsel

7 Crown Beverage Packaging, LLC

8
9
10 By:  _____

Dated: 4/28/20

11 Michael J. Rowley
12 Asst. General Counsel and Asst. Secretary

13 Daimler Trucks North America LLC

14
15
16 By: _____

Dated: _____

17 Jennifer E. Marsh
18 Associate General Counsel

19 Goodrich Corporation

20
21
22 By: _____

Dated: _____

23 Kristen W. Sherman
24 Associate General Counsel

25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 33

April 22, 2020

1 The Boeing Company

2
3
4 By: _____
5 Stanley N. Alpert
6 Senior Environmental Counsel

Dated: _____

7 Crown Beverage Packaging, LLC

8
9
10 By: _____
11 Michael J. Rowley
12 Asst. General Counsel and Asst. Secretary

Dated: _____

13 Daimler Trucks North America LLC

14
15
16 By: J. Marsh
17 Jennifer E. Marsh
18 Associate General Counsel

Dated: April 27, 2020

19 Goodrich Corporation

20
21
22 By: _____
23 Kristen W. Sherman
24 Associate General Counsel

Dated: _____

25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 33

April 22, 2020

1 The Boeing Company

2
3
4 By: _____
5 Stanley N. Alpert
6 Senior Environmental Counsel

Dated: _____

7 Crown Beverage Packaging, LLC

8
9
10 By: _____
11 Michael J. Rowley
12 Asst. General Counsel and Asst. Secretary

Dated: _____

13 Daimler Trucks North America LLC

14
15
16 By: _____
17 Jennifer E. Marsh
18 Associate General Counsel

Dated: _____

19 Goodrich Corporation

20
21
22 By: Kristen W. Sherman
23 Kristen W. Sherman
24 Associate General Counsel

Dated: 5/1/20

25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 32

April 22, 2020

1 Georgia-Pacific LLC

2
3
4 By: Bryant T. Champion

5 Bryant T. Champion

6 SVP Environmental Affairs & Product Safety

Dated: 4/27/20

7 Intalco Aluminum Corporation

8
9
10 By: _____

11 Mark A. Stiffler

12 Vice President

13 Intalco Aluminum LLC

Dated: _____

14 PACCAR, Inc.

15
16
17 By: _____

18 Pamela S. Tonglao

19 Assistant General Counsel

Dated: _____

20
21
22
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25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 34

April 22, 2020

1 Georgia-Pacific LLC

2
3
4 By: _____

Dated: _____

5 Bryant T. Champion
6 SVP Environmental Affairs & Product Safety

7 Intalco Aluminum Corporation

8
9
10 By: Mark A. Stiffler

Dated: May 5, 2020

11 Mark A. Stiffler
12 Vice President Intalco
13 Aluminum LLC

14 PACCAR, Inc.

15
16
17 By: _____

Dated: _____

18 Pamela S. Tonglao
19 Assistant General Counsel

20
21
22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 34

April 22, 2020

1 Georgia-Pacific LLC

2
3
4 By: _____

Dated: _____

5 Bryant T. Champion

6 SVP Environmental Affairs & Product Safety

7 Intalco Aluminum Corporation

8
9
10 By: _____

Dated: _____

11 Mark A. Stiffler

12 Vice President

13 Intalco Aluminum LLC

14 PACCAR, Inc.

15
16 By: Pamela S. Tonglao

Dated: 4/24/2020

17 Pamela S. Tonglao

18 Assistant General Counsel

19
20
21
22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 34

April 22, 2020

1 PCC Structurals, Inc.

2
3
4 By: Ruth A. Beyer
5 Ruth A. Beyer
6 Sr. Vice President & General Counsel

Dated: 5/6/2020

7 Pharmacia LLC

8
9
10 By: _____
11 Drew Reavis
12 Head of Environmental and Sustainability –
13 Monsanto Company, as attorney-in-fact
14 for Pharmacia LLC

Dated: _____

15 Simpson Timber Company

16
17 By: _____
18 Kathryn Navarro, Esq.
19 Vice President, General Counsel

Dated: _____

20
21
22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 35

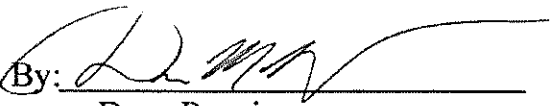
April 22, 2020

1 PCC Structurals, Inc.

2
3
4 By: _____
5 Ruth A. Beyer
6 Sr. Vice President & General Counsel

Dated: _____

7 Pharmacia LLC

8
9
10 By: 
11 Drew Reavis
12 Head of Environmental and Sustainability –
13 Monsanto Company, as attorney-in-fact
14 for Pharmacia LLC

Dated: 24-April-2020

Digitally signed by
Chintan Amin

Date: 2020.04.24

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15 Simpson Timber Company

16
17 By: _____
18 Kathryn Navarro, Esq.
19 Vice President, General Counsel

Dated: _____

20
21
22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 35

April 22, 2020

1 PCC Structurals, Inc.

2
3
4 By: _____
5 Ruth A. Beyer
6 Sr. Vice President & General Counsel

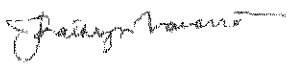
Dated: _____

7 Pharmacia LLC

8
9
10 By: _____
11 Drew Reavis
12 Head of Environmental and Sustainability –
13 Monsanto Company, as attorney-in-fact
14 for Pharmacia LLC

Dated: _____

15 Simpson Timber Company

16 By:  _____
17 Kathryn Navarro, Esq.
18 Vice President, General Counsel

Dated: April 24, 2020

1 Union Oil Company of California, a California Corporation, as successor in
2 interest to Collier Carbon and Chemical Corporation

3 DocuSigned by:
4 By: Harpreet K. Tiwana Dated: 5/6/2020
5 5093F300A32543B...
6 Name: Harpreet K. Tiwana
7 Its: Assistant Secretary

8
9
10 Weyerhaeuser NR Company

11 By: _____ Dated: _____
12 Kristen Swain
13 VP Corp & Govt Affairs

14
15 SO ORDERED this _____ day of _____, 2020.

16
17
18 _____
19 SALVADOR MENDOZA, JR.
20 United States District Judge

21
22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 36

April 22, 2020

1 Union Oil Company of California

2
3
4 By: _____
5 Michael W. Woody
6 Assistant Secretary

Dated: _____

7 Weyerhaeuser NR Company

8
9
10 By: Kristen Sawin
11 Kristen Sawin
12 VP Corp & Govt Affairs

Dated: 4/23/2020

13
14
15
16 SO ORDERED this 8th day of September, 2020.

17 Salvador Mendoza Jr.
18
19 SALVADOR MENDOZA, JR.
20 United States District Judge

21
22
23
24
25
26 CONSENT DECREE BETWEEN
IWAG III AND THE UNITED
STATES, AND ORDER OF
DISMISSAL- 35

April 22, 2020